

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jun 16, 2022

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOSEPH RILEY and SHALEE
RILEY, husband and wife; and the
marital community comprised thereof;
on behalf of minors F.R.; A.R.; L.D-R;
and G.W.,

Plaintiffs,

v.

CITY OF SPOKANE VALLEY,
SPOKANE COUNTY PROSECUTOR
LARRY HASKELL, SPOKANE
COUNTY PROSECUTOR SHARON
HEDLUND, SPOKANE COUNTY
SHERIFF'S DEPARTMENT;
SHERIFF OZZIE KNEZOVICH;
DETECTIVE MARC MELVILLE;
JAMIE L. PETERSON, a single person;
JOHN/JANE DOE 1-10,

Defendants.

No. 2:21-cv-00355-SMJ

**ORDER GRANTING
DEFENDANT'S MOTION TO
DISMISS AND DENYING
PLAINTIFF'S MOTION FOR
LEAVE TO FILE AMENDED
COMPLAINT**

Before the Court is Defendant Jamie Peterson's Motion to Dismiss, ECF No. 7, and Plaintiffs' Motion for Leave to File Amended Complaint, ECF No. 8. Having reviewed the relevant record, the Court is fully informed and grants Defendant Peterson's motion to dismiss all claims against him and denies Plaintiffs' motion leave of Court to file an amended complaint.

BACKGROUND¹

Plaintiff Joseph Riley (“Plaintiff”) is a Spokane, Washington resident and owns a local tattoo shop. On the night of December 28, 2022 through the early morning of the next day, Plaintiff was at his residence with his wife and children. ECF Nos. 1 at 5; 1-1 at 2. Meanwhile, at some point during the night of December 28, 2022, Kailyn Mellick, Stephanie Banna, and Daniel Jarman arrived at Ichabod’s Bar and Grill in Spokane Valley, Washington. ECF No. 1 at 5; *see also* ECF No. 1-2 at 2. While the three were at Ichabod’s, a male approached the group because he recognized Stephanie. *Id.* Stephanie allegedly introduced the male as “Joe” and mentioned to the others that he worked as a tattoo artist.² *Id.* The male then joined the group. *Id.*

Eventually, the group decided to leave Ichabod’s and go to Kailyn’s house. *Id.* While at the house, Kailyn became uncomfortable because Daniel appeared intoxicated and ready to fall asleep, and Kailyn did not want people “crash[ing]” at her house. *Id.* Stephanie then realized she left her jacket at Ichabod’s, so the group decided to go back to the bar.

¹ Most of the facts detailed in this section come from Plaintiff’s complaint and the documents attached thereto. The Court accepts these facts as true for purposes of this Order only.

² Stephanie does not recall introducing the man as “Joe.” ECF No. 1-10 at 4.

1 Once back at the bar but still in Stephanie's vehicle, the male who Stephanie
2 introduced as Joe "said something to the effect of 'let's just leave Daniel here.'" ECF No. 1-2 at 2. This statement apparently caused an argument between the male
3 and Daniel Jarman, and the two got aggressive with each other and exited the
4 vehicle. *Id.* The male then punched Mr. Jarman in the face, knocking him out. *Id.*
5 Mr. Jarman fell to the ground, and the male leaned over and punched Mr. Jarman at
6 least a dozen more times.³ *Id.* Kailyn exited the vehicle and called 911. *Id.*

8 The male assailant fled the scene before law enforcement arrived. ECF Nos.
9 1 at 6; 1-6 at 2. Once police arrived, both Kailyn and Stephanie stated that they did
10 not know the male, though they acknowledged they were with him throughout the
11 evening and described him as "a white male wearing a black shirt and jeans," with
12 "brown hair," "around 5'10, and average build." ECF No. 1-26 at 2.

13 The next day, Kailyn, believing that the male perpetrator was a tattoo artist
14 named Joe, performed an online search on Facebook and pulled up Plaintiff's
15 profile page. ECF No. 1-6 at 2. She looked through the photos visible on his page
16 and believed he was the male who assaulted Mr. Jarman. *Id.* After this, Kailyn called
17 Spokane County Crime Check and reported Plaintiff as the assailant. *Id.*

18 On January 2, 2020, Spokane County Sheriff Detective Marc Melville drove
19 to the Spokane Valley Mall where Plaintiff maintains the tattoo shop. ECF No. 1-1

20 _____
³ Daniel Jarman eventually passed away from these injuries. *See* ECF No. 1-7 at 2.

1 at 2. When he arrived, he saw Plaintiff leaving with another person and did not
2 contact him. *Id.* Detective Melville then drove to Plaintiff's house where Plaintiff
3 answered the door. *Id.* Detective Melville informed Plaintiff of the reason for his
4 presence but Plaintiff denied having ever visited Ichabod's. Plaintiff stated that he
5 had been home all night with his wife and children. *Id.* Shalee Riley, Plaintiff's
6 wife, indicated the same. *Id.* Detective Melville called Stephanie requesting a
7 physical description of the assailant. *Id.* Detective Melville determined that "[t]his
8 physical description matched that of [Plaintiff]" and placed Plaintiff under arrest
9 for first degree assault and transported him to the Spokane Public Safety Building
10 for a formal interview. *Id.*

11 In the weeks following the assault, Detective Melville also interviewed
12 Stephanie and Kailyn, visited Ichabod's to talk to the bartenders and obtain receipts
13 and surveillance footage, and processed Plaintiff's cellular device for location data.
14 ECF Nos. 1-5, 1-7, 1-10. On January 24, 2020, the Spokane Valley Police
15 Department published a press release detailing the assault and naming Plaintiff as
16 the suspect. ECF No. 1-21. Later, a review of Plaintiff's location data "did not reveal
17 he had been present at Ichabod's at the time of the assault on Daniel." ECF No. 1-23
18 at 2.

19 On January 28, 2022, Stephanie called Detective Melville and seemed upset.
20 *Id.* Stephanie advised Detective Melville that she had recently been shown a picture

1 of a male named Jamie Peterson, who looked “VERY similar to [Plaintiff].” *Id.*
2 (emphasis in original). Stephanie described a “sinking feeling,” as she thought she
3 may have mistaken Jamie for Plaintiff. *Id.* During the conversation, Detective
4 Melville recalled reviewing an Ichabod’s receipt from the night of attack in Jamie’s
5 name. *Id.*

6 Detective Melville then contacted and interviewed Jamie, who admitted to
7 being present at Ichabod’s on the night of the assault. ECF No. 1-24 at 2. Jamie
8 stated that he did not know anyone by the names of Stephanie or Kailyn and denied
9 involvement in any type of altercation or fight. *Id.* At some point during the
10 interview, Detective Melville noticed that Jamie had a mark from a tattoo that had
11 recently been lasered off. Detective Melville recalled that Stephanie “had
12 specifically mentioned the suspect had a tattoo removed via laser.” *Id.* After the
13 interview concluded, Detective Melville called Spokane County Prosecutor Sharon
14 Hedlund and adviser her what he learned about Jamie. ECF No. 1 at 18.

15 On January 30, 2020, the Spokane County Prosecutor’s Office dismissed
16 with prejudice all charges against Plaintiff. ECF No. 1-13. It is unclear whether
17 Jamie Peterson was ever charged for the assault and resulting death.

18 On December 22, 2021, Plaintiff filed this instant action against City of
19 Spokane Valley, Spokane County Prosecutor Larry Haskall, Spokane County
20 Prosecutor Sharon Hedlund, Spokane County, Spokane County Sheriff’s

1 Department, Sheriff Ozzie Knezovich, Detective Marc Melville, Jamie L. Peterson,
2 and John/Jane Doe 1-10. At bottom, Plaintiff alleges that as a result of “false
3 statements, misleading police reports, false probable cause affidavits, and media
4 releases,” he was falsely arrested and held out to the public as a violent criminal,
5 causing harm to himself and his family. ECF No. 1 at 18.

6 Defendant Jamie Peterson now moves to dismiss all claims asserted against
7 him. ECF No. 7. Plaintiff responds that he has adequately stated a claim against
8 Defendant Peterson for common law negligence. ECF No. 9. Plaintiff also requests
9 leave of Court to file an amended complaint asserting additional claims against
10 Defendant Peterson for defamation and false light. ECF No. 8. Defendant Peterson
11 opposes Plaintiff’s motion as futile. ECF No. 12.

12 LEGAL STANDARD

13 A. Motion to Dismiss

14 A complaint must contain “a short and plain statement of the claim showing
15 that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Under Federal Rule of
16 Civil Procedure 12(b)(6), the Court must dismiss the complaint if it “fail[s] to state
17 a claim upon which relief can be granted.”

18 In deciding a Rule 12(b)(6) motion, the Court construes the complaint in the
19 light most favorable to the plaintiff and draws all reasonable inferences in the
20 plaintiff’s favor. *Ass’n for L.A. Deputy Sheriffs v. County of Los Angeles*, 648 F.3d

1 986, 991 (9th Cir. 2011). Thus, the Court must accept as true all factual allegations
2 contained in the complaint. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). But the
3 Court may disregard legal conclusions couched as factual allegations. *See id.*

4 To survive a Rule 12(b)(6) motion, the complaint must contain “*some viable*
5 *legal theory*” and provide “fair notice of what the claim is and the grounds upon
6 which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 562 (2007) (internal
7 quotation marks and ellipsis omitted). Thus, the complaint must contain “sufficient
8 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its
9 face.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). Facial
10 plausibility exists where the complaint pleads facts permitting a reasonable
11 inference that the defendant is liable to the plaintiff for the misconduct alleged. *Id.*
12 Plausibility does not require probability but demands more than a mere possibility
13 of liability. *Id.* While the complaint need not contain detailed factual allegations,
14 threadbare recitals of a cause of action’s elements, supported only by conclusory
15 statements, do not suffice. *Id.* Whether the complaint states a facially plausible
16 claim for relief is a context-specific inquiry requiring the Court to draw from its
17 judicial experience and common sense. *Id.* at 679.

18 **B. Leave to Amend**

19 Federal Rule of Civil Procedure 15(a)(2) directs Courts to “freely give leave”
20 to amend the pleadings “when justice so requires.” Although courts must be

generous in granting leave to amend, *United States v. Corinthian Colleges*, 655 F.3d 984, 995 (9th Cir. 2011), such leave is not automatic, *see Parish v. Frazier*, 195 F.3d 761, 763 (5th Cir. 1999). Granting leave to amend is within the discretion of the trial court. *See Foman v. Davis*, 371 U.S. 178, 182 (1962). Courts consider several factors, including (1) bad faith on the part of the movant; (2) undue delay; (3) prejudice to the opposing party; (4) futility of amendment; (5) and whether the plaintiff has previously amended the complaint. *Corinthian Colleges*, 655 F.3d at 995. A court may deny leave to amend “if the proposed amendment is futile or would be subject to dismissal.” *Wheeler v. City of Santa Clara*, 894 F.3d 1046, 1059 (9th Cir. 2018). An amendment is futile when “no set of facts can be proved under the amendment to the pleadings that would constitute a valid and sufficient claim or defense.” *Miller v. Rykoff–Sexton*, 845 F.2d 209, 214 (9th Cir. 1988).

DISCUSSION

A. Plaintiff has not stated a claim against Defendant Peterson for common law negligence

Plaintiff argues that he has stated a claim against Defendant Peterson for common law negligence and urges the Court to deny Defendant’s motion to dismiss. Under Washington law, “[t]he essential elements of actionable negligence are: (1) the existence of a duty owed to the complaining party; (2) a breach thereof; (3) a resulting injury; and (4) a proximate cause relationship between the claimed breach and the resulting injury.” *Hostetler v. Ward*, 704 P.2d 1193, 1198 (Wash. Ct. App.

1 1985). The existence of a duty is a common law element of negligence and “can
2 arise either from common law principles or from a statute or regulation.” *Doss v.*
3 *ITT Rayonier, Inc.*, 803 P.2d 4, 7 (Wash. Ct. App. 1991). “Whether a duty exists in
4 the negligence context is a question of law.” *Aba Sheikh v. Choe*, 128 P.3d 574
5 (Wash. 2006) (en banc).

6 Plaintiff submits that Defendant Peterson was negligent for falsely allowing
7 others to believe that he was Plaintiff. ECF No. 9 at 6. The Court first notes that
8 Plaintiff’s complaint does not allege the existence of a duty, nor does it delineate
9 how Defendant Peterson breached any duty owed to Plaintiff. Beyond this
10 deficiency, and accepting Plaintiff’s factual assertions as true, the Court finds that
11 Defendant Peterson did not breach any duty owed to Plaintiff. The Court is not
12 aware of, and Plaintiff has not cited to, any duty under Washington law requiring
13 persons to correct others who falsely believe they are someone else.

14 And to be sure, even if the Court were to find that Defendant Peterson
15 breached a duty, Plaintiff has not plausibly alleged that any breach was the
16 proximate cause of Plaintiff’s damages. To adequately allege proximate cause, a
17 plaintiff must allege both cause in fact and legal cause. *Meyers v. Ferndale Sch.*
18 *Dist.*, 481 P.3d 1084, 1089 (Wash. 2021). “Legal causation is, among other things,
19 a concept that permits a court for sound policy reasons to limit liability where duty
20 and foreseeability concepts alone indicate liability can arise.” *Id.* at 1090. The

1 question then becomes “whether as a matter of policy the connection between the
2 ultimate result and the act or omission of the defendant is too remote or insubstantial
3 to impose liability.” *Id.* at 1091.

4 Accepting Plaintiff’s factual assertions as true, Plaintiff’s complaint and
5 supporting exhibits show that, at most, Defendant Peterson failed to correct
6 Stephanie when she introduced him to the group as Joe and mentioned that he
7 worked as a tattoo artist.⁴ After the assault, law enforcement’s arrest of Plaintiff
8 resulted not from any statements made by Defendant Peterson, but from statements
9 by non-parties who falsely identified Plaintiff after having recognized him on
10 Facebook. Without alleging Defendant Peterson had some sort of plan to deceive
11 the group, commit the assault, and then have another person arrested, it is too
12 annuated to say that Defendant’s Peterson’s failure to correct his identity to the
13 group at the bar was the proximate cause of Plaintiff’s arrest days later. This is
14 particularly so given the amount of intervening events, including Stephanie and
15 Kailyn’s statements to law enforcement and Detective Melville’s several-day
16 investigation before Plaintiff’s arrest.

17
18 ⁴ Plaintiff alleges that Defendant Peterson assumed his identity. ECF No. 1 at 21.
19 The facts asserted in the complaint, however, support no more than an allegation
20 that Defendant Peterson failed to correct Stephanie when she indicated his name
was Joe and that he worked at tattoo shop. The Court cannot glean from the
complaint that Defendant Peterson affirmatively acted to appropriate Plaintiff’s
identity specifically.

1 Next, Plaintiff argues that he has stated a negligence claim against Defendant
2 Peterson for denying his involvement in the assault when confronted by law
3 enforcement. ECF No. 9 at 6. But Defendant Peterson did not have a duty to
4 implicate himself in a crime. When Detective Melville interviewed Defendant
5 Peterson, Defendant Peterson was considered a suspect in Daniel Jarman's assault
6 and resulting death. *See* ECF No. 1-24 at 2. The Fifth Amendment of the United
7 States Constitution protects against compulsory self-incrimination. U.S. Const.
8 amend. V. The basic purpose of this protection is to preserve "the integrity of a
9 judicial system in which even the guilty are not to be convicted unless the
10 prosecution shoulder the entire load." *Tehan v. United States ex rel. Shott*, 382 U.S.
11 406, 415 (1966) (internal citations omitted). This, of course, means that persons
12 have no duty to voluntarily admit a crime to law enforcement. Given this
13 longstanding constitutional protection, Defendant Peterson owed no duty to
14 Plaintiff to admit to law enforcement his involvement in the assault. Doing so would
15 contravene the very purpose the framers intended.

16 In light of the foregoing, the Court finds that Plaintiff has failed to state a
17 claim for common law negligence against Defendant Peterson.

18 **B. Plaintiff's proposed amendments are futile**

19 Plaintiff moves for leave of Court to file an amended complaint adding
20 claims for defamation and false light against Defendant Peterson. ECF No. 8.

1 Defendant Peterson opposes the amendment as futile. ECF No. 12. Having
2 reviewed the proposed amendment, the Court agrees with Defendant that a claim
3 for defamation could not survive a motion to dismiss and therefore denies Plaintiff
4 leave of Court.

5 Under Washington law, “a prima facie defamation claim requires a plaintiff
6 to prove falsity, an unprivileged communication, fault, and damages.” *Sequist v.*
7 *Caldier*, 438 P.3d 606, 612 (Wash. Ct. App. 2019). To prove falsity, “a plaintiff
8 must prove either a statement was false or a statement left a false impression by
9 omitted facts.” *Id.* (citing *Mohr v. Grant*, 108 P.3d 768, 774 (Wash. 2005)).

10 Plaintiff submits that he has stated a claim for “defamation by implication on
11 the part of [Defendant Peterson] because he had multiple opportunities to correct
12 that mistaken assumption that he was [Plaintiff].” ECF No. 13 at 4. Defamation by
13 implication, however, still requires a communication. *See Hoppe v. Hearst Corp.*,
14 770 P.2d 203, 205 (Wash. Ct. App. 1989) (The threshold requirement
15 in a defamation action is that the defendant must have made a defamatory
16 communication. Unless this requirement is satisfied, there is no actionable
17 defamation claim.”). Again, Plaintiff’s complaint supports that Defendant Peterson
18 failed to correct the group who believed his name was Joe, but there is no allegation
19 that Defendant Peterson ever communicated anything to the group. Silence alone
20 cannot be a “defamatory communication.”

1 Plaintiff's false light claim fails for a similar reason. "A false light claim
2 arises when someone publicizes a matter that places another in a false light if (a)
3 the false light would be highly offensive to a reasonable person and (b) the actor
4 knew of or recklessly disregarded the falsity of the publication and the false light in
5 which the other would be placed." *Eastwood v. Cascade Broad. Co.*, 722 P.2d 1295,
6 1297 (Wash. 1986). Plaintiff's proposed amended complaint does not allege that
7 Defendant Peterson made or caused any publication. The only publication at issue
8 in this matter is the press release publicized by Spokane Valley Police Department.
9 This missing element is fatal to Plaintiff's proposed claim.

10 Plaintiff's proposed amended complaint fails to state a claim for either
11 defamation or false light. Given this, the Court finds that the requested amendment
12 would be futile and will deny leave of Court to file an amended complaint. Because
13 no claims remain against Defendant Peterson, the Court dismisses him as a
14 defendant in this matter.

15 Accordingly, **IT IS HEREBY ORDERED:**

- 16 1. Defendant Peterson's Motion to Dismiss, **ECF No. 7**, is **GRANTED**.
- 17 2. Plaintiffs' Motion for Leave to File Amended Complaint, **ECF No. 8**,
18 is **DENIED**.
- 19 3. All claims against Defendant Jamie L. Peterson are **DISMISSED**
20 **WITH PREJUDICE**.

4. The Clerk's Office is directed to **AMEND the caption as follows:**

JOSEPH RILEY and SHALEE RILEY, husband and wife; and the marital community comprised thereof; on behalf of minors F.R.; A.R.; L.D-R; and G.W.,

Plaintiffs,

V.

CITY OF SPOKANE VALLEY, SPOKANE COUNTY
PROSECUTOR LARRY HASKELL, SPOKANE COUNTY
PROSECUTOR SHARON HEDLUND, SPOKANE COUNTY
SHERIFF'S DEPARTMENT; SHERIFF OZZIE KNEZOVICH;
DETECTIVE MARC MELVILLE; JOHN/JANE DOE 1-10,

Defendants.

IT IS SO ORDERED. The Clerk's Office is directed to enter this Order and provide copies to all counsel.

DATED this 16th day of June 2022.

Jawadi Mendaq

SALVADOR MENDOZA, JR.
United States District Judge